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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In the Matter of )  
 )  
Amendment of Part 90 of the ) PR Docket No. 93-144 ✓  
Commission's Rules to Facilitate ) RM-8117, RM-8030  
Future Development of SMR Systems ) RM-8029  
in the 800 MHz Frequency band )  
 )  
and )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act -- )  
Competitive Bidding 800 MHz SMR )  
  
To: The Commission

COMMENTS OF DIAL CALL COMMUNICATIONS, INC.  
ON FURTHER NOTICE OF PROPOSED RULE MAKING

DIAL CALL COMMUNICATIONS, INC.

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January 5, 1995

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**COMMENTS OF DIAL CALL COMMUNICATIONS, INC.  
ON FURTHER NOTICE OF PROPOSED RULE MAKING**

Dial Call Communications, Inc. ("Dial Call"), pursuant to FCC Rule Section 1.415(a), submits its comments on the Further Notice of Proposed Rule Making,<sup>1/</sup> released in this proceeding and shows the following:

**I. Introduction and Summary.**

1. Dial Call is a Delaware corporation which itself and through various subsidiaries provides Specialized Mobile Radio Service ("SMR") in some 13 states. It provides service to or has agreements to acquire systems providing service to more than 75,000 SMR subscriber units. Dial Call has made a substantial investment in improving the capability and utility of SMR service to its customers. To that end, it is establishing a digital enhanced SMR system throughout the southern United States ("Digital Wide Area Network" or "DPCN") which, as previously announced, is expected to

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<sup>1/</sup> 9 FCC Rcd \_\_\_\_\_, FCC 94-271, 59 FR 60112 (Nov. 22, 1994).

commence providing service in various markets in the South in the second quarter of 1995. Dial Call has consummated a number of acquisitions of SMR channels and SMR service providers to consolidate a sufficient amount of spectrum to construct and operate its DPCN. Additionally, Dial Call has committed more than \$170 million for digital infrastructure and subscriber equipment. Dial Call expects to market integrated communications services that will include wireless telephone services, dispatch, and paging, which services are expected to compete with the established cellular duopolies in the region as well as providers of the recently authorized Personal Communications Service ("PCS") and other services wireless communications service providers.<sup>2/</sup>

2. The Commission seeks comment on a myriad of issues pertaining to the licensing, construction and operation of SMR stations. Specifically, the Commission proposes to allocate ten MHz of 800 MHz spectrum currently allocated to "local" SMR operations ("Contiguous 800 MHz SMR Channels")<sup>3/</sup> for the licensing of wide-area SMR networks and to revisit the licensing of "local" SMR stations on the remaining four MHz of 800 MHz spectrum currently allocated for SMR operations ("Non-Contiguous 800 MHz SMR

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<sup>2/</sup> Dial Call is a wholly owned subsidiary of Dial Page, Inc. ("Dial Page") Dial Page, also a Delaware corporation, provides Public Land Mobile Service ("PLMS") and Private Carrier Paging Service ("PCP") to over 300,000 subscriber units throughout the southeastern United States.

<sup>3/</sup> This spectrum is allocated from 816 to 821 and 861 to 865 MHz.

Channels").<sup>4/</sup> As an incumbent SMR licensee with an authorized wide-area system covering the southern United States, Dial Call welcomes this opportunity to address the Commission's various proposals set forth in the Further Notice.

3. Because the Commission's proposals could adversely impact Dial Call's operation and its ability to provide competitive wireless communications to the public within its chosen market, this proceeding is of particular concern to Dial Call. Dial Call generally supports the Commission's proposal to re-allocate the Contiguous 800 MHz SMR Channels for block licensing on a Metropolitan Trading Area ("MTA") wide-area basis ("MTA License") to create regulatory parity with other Commercial Mobile Radio Service ("CMRS") providers. However, the Commission should be mindful to protect the significant investments Dial Call and other incumbent 800 MHz licensees have made in implementing wide-area systems prior to this proceeding.

4. Dial Call urges the Commission to adopt licensing rules that generally deter speculation in 800 MHz SMR licenses at the expense of existing licensees, such as Dial Call, that have already invested hundreds of millions of dollars in acquiring channels, and in designing and constructing digital wide-area systems. Specifically, Dial Call supports the licensing of a single ten MHz MTA based license ("MTA License") and the Commission's proposal that

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<sup>4/</sup> In the 811 to 816 and 856 to 860 MHz band, 80 paired 25 KHz channels are allocated for SMR operations.

incumbent licensees not obtaining an MTA License not be subjected to any form of mandatory relocation. Additionally, Dial Call supports the Commission's proposal that the MTA Licensee be required to provide coverage to one-third of the MTA population within three years of initial license grant and two-thirds of the MTA population by the end of the five year construction period. Moreover, coverage should be defined as constructing some percentage of frequencies over the required population coverage area. Additionally, as the Commission has proposed, the construction requirements for the MTA License should be without regard to the number of incumbent licensees with whom the MTA Licensee may need to negotiate, with the failure to meet those construction requirements resulting in forfeiture of the MTA License.

5. Furthermore, Dial Call urges the Commission to permit those licensees which have obtained extended implementation authorizations to convert and establish digital wide-area systems to go forward with the construction, implementation and operation of their systems utilizing the extended implementation schedules already authorized. In addition, Dial Call supports the adoption of a defined service area for SMR licensees allowing existing SMR licensees to construct stations anywhere within their defined protected service area. Dial Call, however, does not support the proposal to re-allocate the 150 General Category channels ("General Category Channels") to SMR-only use. Instead, the Commission should continue to permit licensing in the Non-Contiguous 800 MHz SMR Channels, as well as the General Category Channels, under existing

SMR licensing rules, including the ability to include such channels in wide-area, extended implementation systems.

6. Finally, the Commission should not employ auctions to select from among mutually exclusive MTA License applicants. Auctioning of this spectrum would exceed Congress's delegation of auction authority to the Commission and, in any event, ignore the hundreds of millions of dollars poured into the creation of the enhanced SMR industry by companies such as Dial Call in reliance upon the existing regulatory structure. Instead, the MTA License should be awarded to a qualified applicant after negotiations.

**II. Dial Call supports the licensing of a single ten MHz block license for the "upper" 200 channels in each MTA.**

7. To create regulatory parity among the MTA Licensee and Cellular and Broadband PCS providers, the Commission should license one ten MHz block of contiguous spectrum per MTA. Dial Call does not support, however, the Commission's proposal to allocate the channels in four blocks of 50 channels each. Although the Commission would not prohibit one applicant from consolidating two or more of the 50 channel blocks, Dial Call believes that the licensing of four separate blocks will not facilitate wide-area SMR licensing. The Commission has determined wide-area SMR to be competitive with cellular and broadband PCS systems. Cellular licensees have 25 MHz of contiguous spectrum on which to operate, whereas PCS licenses will be issued for either 30 or ten MHz of spectrum. Wide-area SMR licensees will be placed at a competitive disadvantage if they are tasked with the time and expense of

aggregating four 2.5 MHz blocks of spectrum rather than being able to license one ten MHz block.

8. Previously, 800 MHz licensing was on a five-channel non-contiguous block basis, generally with each channel being separated by one megahertz. Therefore, with wide-area licenses being issued on a 2.5 MHz basis, unless a wide-area licensee aggregates all four blocks, incumbent licensees may have to negotiate with four different licensees. The ultimate implementation of any wide-area system would obviously be substantially delayed by this situation. And this delay would obviously also result in a loss to the public of SMR as a competitive CMRS service.

**III. Dial Call opposes any form of mandatory  
relocation of incumbent licensees.**

9. Dial Call supports the Commission's proposal that relocation/retuning of incumbent licensees should not be mandatory. All relocation should be accomplished by voluntary negotiations between the MTA Licensee and the incumbent licensees. Dial Call is opposed to the Commission's suggestion that relocation be voluntary for some period of time, followed by mandatory negotiations and then mandatory retuning. Any form of mandatory retuning would be burdensome for incumbent licensees. Existing licensees and subscribers would be disrupted if forced to retune transmission and end user equipment. The costs of retuning would be more than just the costs of retuning transmitters and subscriber equipment. Dial Call, for example, has devoted substantial resources to planning and



constructing its DPCN based upon the exact location of specific frequencies for which it is now licensed.

10. Moreover, any forced relocation, being a modification of the incumbent's license, would by law have to await either the expiration of the incumbent's license, or the results of a show cause proceeding instituted pursuant to Section 316(a) of the Communications Act of 1934, as amended. Either procedure would take so long to accomplish as to be of limited benefit in establishing wide-area SMR systems as substantial CMRS competitive forces.

**IV. Dial Call supports a five-year construction requirement that couples minimum population coverage with construction of a significant number of frequencies.**

11. Dial Call supports the imposition of stringent construction requirements to deter the speculation in the MTA Licenses by parties who do not have the ability or intention to provide service on the MTA Licenses. Dial Call supports the Commission's proposal that in order to satisfy construction requirements, the MTA Licensee would be required to provide coverage to at least one-third of the MTA population within three years of its initial license grant and to provide coverage to at least two-thirds of the MTA population within the five years. These construction requirements are consistent with the construction periods imposed on ten MHz PCS licensees. However, Dial Call supports coupling such population requirements with a requirement that a minimum number of frequencies be constructed over the covered population. Dial Call also supports the Commission's proposal that construction requirements for the MTA License be without regard to

the number of incumbent licensees or the MTA License's success in negotiating with incumbent licensees. Finally, Dial Call agrees with the Commission that the failure to properly construct an MTA License should result in forfeiture of that license. These construction requirements would limit an entity's ability to speculate in these licenses. Requiring some level of construction on some number of frequencies within three years should not be unduly burdensome because existing wide-area SMR service providers have begun planning and constructing systems throughout the country.

**V. Dial Call supports the Commission proposal to incorporate provisions that would enable incumbent systems to construct within a defined protected service area.**

12. Dial Call believes that incumbent licensees would be provided greater flexibility to maintain and expand existing systems by allowing construction of new base stations within the 22 dBu interference contour of the originally authorized station(s). The incumbent licensee should be able to move, modify or remove facilities as necessary to provide service to its customers in its defined service area without prior Commission approval. Commission approval of new facilities or facility relocation would be necessary only if the new or modified facilities extended the contours of the service area.

**VI. Existing licensees should retain extended implementation grants.**

13. Dial Call further supports the Commission's proposal to allow incumbent licensees to continue to operate existing, authorized systems (including continuing to prosecute license

modifications of such systems) in the 800 MHz band. To do otherwise would unfairly penalize Dial Call and other enhanced SMR pioneers, without whose efforts this proceeding, and indeed the very idea of enhanced SMR systems, would never have happened. This is particularly imperative to protect the extensive investments made by existing wide-area licensees, such as Dial Call, as described above. In that connection, Dial Call recommends the Commission, as part of its determination of the rights for continued operation of incumbent licensees', permit those licensees to construct and implement their networks under previously granted extended implementation authorizations.<sup>5/</sup>

**VII. The Commission should not  
reclassify General Category Channels.**

14. The Further Notice requests comment whether eligibility for the General Category Channels should be modified either to SMR only use or for non-SMR only use. The Commission's appears to be concerned that permitting SMR access to General Category Channels might cause SMRs to gravitate toward them in lieu of primary "auctionable" SMR spectrum because the shared use of these channels by CMRS and PMRS eligibles precludes the FCC from assigning them by competitive bidding. The Commission also suggests that prohibiting or limiting SMR use of these frequencies would increase 800 MHz spectrum availability for non-SMRs. Further Notice at paras. 52-54.

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<sup>5/</sup> Again, to do anything less than this would work as an involuntary modification of such licensees' authorizations, entitling them to a hearing pursuant to Section 316(a) of the Act.

15. Dial Call opposes any reclassification of eligibility for General Category Channels. 800 MHz SMRs currently have access on a primary basis to the 200 contiguous channels at 861-865 MHz and the 80 channels interleaved in the 856-860 MHz band, co-primary use of the 150 General Category Channels, and inter-category access to the 100 Business and Industrial/Land Transportation channels. A substantial percentage of SMR operations, and even individual SMR systems, include frequencies from some combination of these pools. Dial Call fully supports retention of the existing rules which permit the use of General Category Channels in trunked systems, including in wide-area systems.

16. Moreover, the rationale advanced in the Further Notice for restricting non-MTA based SMR licensees from using 800 MHz spectrum beyond the 80 remaining SMR channels is not persuasive. As discussed below, it is far from clear that Congress intended the FCC to employ auctions to assign any 800 MHz spectrum. Indeed, Dial Call believes the Commission affirmatively lacks delegated authority to auction SMR spectrum. However, even if CMRS use of exclusively SMR 800 MHz spectrum is subject to competitive bidding, the Commission's concern that this would be an incentive driving SMRs to employ the General Category Channels in lieu of available SMR channels is misplaced. The current rules strictly limit the use even of General Category Channels in trunked SMR systems.<sup>6/</sup> These rules prohibit SMRs from being assigned General Category Channels

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<sup>6/</sup> See FCC Rule Sections 90.615 and 90.621(g)(3).

for expansion capacity unless no primary SMR frequencies are available. The rules also strictly limit the permissibility of converting heretofore conventional General Category Channels to trunked configurations. Because SMRs cannot acquire General Category Channels on an equivalent basis with primary SMR channels, the incentive described in the Further Notice does not exist.

17. The FCC's concern to retain spectrum for non-SMR use, while understandable, would not be addressed by excluding SMRs from using General Category Channels. In fact, the vast majority of those frequencies are already being used in trunked SMR operations in most areas of spectrum scarcity. Since the channels have only been available for this purpose for a short time, it is apparent that this spectrum remained substantially underutilized for years. The FCC determined correctly that spectrum should not remain fallow, but instead should be made available to those who would make productive use of it. Given the history of the licensing of these frequencies, Dial Call recommends the Commission not revise the rules concerning eligibility of General Category Channels, and continue to permit all Part 90 CMRS and PMRS eligibles to apply for and operate on these frequencies.

**VIII. The Commission should not employ competitive bidding to choose among mutually exclusive MTA License applicants.**

18. Dial Call opposes the Commission's conclusion that further licensing in the 800 MHz SMR bands should be conducted by competitive bidding. For the most part, the frequencies which the Commission seeks to auction, the Contiguous 800 MHz SMR Channels,

are already licensed. The Commission's plan to re-allocate the 800 MHz spectrum will merely change the form of the authorization. This is merely a modification of authority, for which competitive bidding was never intended to be used. Auctioning of these rights ignores the hundreds of millions of dollars invested in acquisitions and infrastructure by existing licensees such as Dial Call. These companies should be allocated the rights represented by the MTA License. They should not be required to spend additional amounts and, perhaps, be forced to bid against third parties that to date have taken no interest in creating and building the enhanced wide-area SMR industry.

19. The "re-allocation" of this band is not similar to the re-allocation of the two GHz band for PCS. The incumbent licensees there are not and will not be competitors of PCS providers; nor do they provide the same or similar service. Rather, the incumbent licensees are providing fixed microwave operation, whereas PCS licensees will provide a CMRS. Accordingly, a new service will be provided in the two GHz band, while no new service will be provided in the 800 MHz block.

20. Congress did not intend, much less mandate, the use of auctions for the assignment of either MTA-wide or more traditional SMR systems. The text of the legislation itself, and the accompanying legislative history, evidences Congressional intent that the Commission employ auctions for the issuance of new

authorizations in newly allocated services, such as PCS.<sup>17/</sup> There is no indication that auctions were to be used for systems such as 800 MHz SMR, where virtually all spectrum has already been assigned and licenses are being issued almost exclusively either for the "white space" in MTA-wide authorizations or to modify in some other way the operation of existing, traditional systems. Congress did not intend auctions to be used as a vehicle to recover retroactively the spectrum value of existing systems, but rather to enable prospective licensees to put spectrum to its most valuable use on an expeditious basis. Because the licensing situation in the instant proceeding does not conform to that Congressional objective, there is no statutory basis for assigning either MTA Licenses or other 800 MHz SMR licenses by competitive bidding. [Expand] the MTA License should be awarded to a qualified applicant after negotiations. MTA Licenses should only be granted only to existing licensees within the respective MTA that have licenses for some minimum number of channels covering some minimum percentage of the population. Qualified applicants would resolve which entity or entities should be awarded the MTA License by negotiation, followed by competitive bidding among such qualified applicants only if they are unable to agree on allocation of the MTA License within two years.

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<sup>17/</sup> 47 U.S.C. Sec. 309(j); H.R. Rep. No. 103-213, 103d Cong., 1st Sess. (1993).

**IX. Conclusion.**

21. In sum, Dial Call generally supports the Commission's proposals in this proceeding. It supports the licensing of one contiguous ten MHz MTA block license, but opposes any form of mandatory relocation or retuning of incumbent licensees. It supports a five-year construction requirement that couples minimum population coverage with construction of a significant number of frequencies. It supports the Commission proposal to incorporate provisions that would enable incumbent systems to construct and modify their systems within a defined protected service area, with the proviso that existing licensees should retain grants of authority for extended implementation schedules. However, Dial Page believes the Commission should not reclassify General Category Channels and that the Commission should not employ competitive bidding to choose among mutually exclusive MTA License applicants.

WHEREFORE, THE PREMISES CONSIDERED, Dial Call Communications, Inc. respectfully requests that the Commission take action in this proceeding in a manner consistent with these comments.

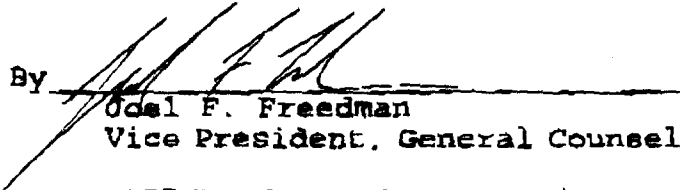


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Respectfully submitted,

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January 5, 1995